

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

-----x

LR CREDIT 13, LLC,

Plaintiff,

- against -

JOSE GUZMAN,

Defendant

-----x

STATE OF NEW YORK )

ss:

COUNTY OF BRONX )

Index No. 43405-2007

AFFIDAVIT IN SUPPORT OF  
ORDER TO SHOW CAUSE  
TO VACATE DEFAULT  
JUDGMENT AND DISMISS FOR  
LACK OF PERSONAL  
JURISDICTION

NO FILE AVAILABLE

JOSE GUZMAN, being duly sworn, depose and say that:

1. I am an unrepresented Defendant in the above-captioned action.
2. I am fully familiar with the facts set out in this Affidavit.
3. I submit this Affidavit in support of this Order to Show Cause to vacate the default judgment and dismiss the action for lack of personal jurisdiction and attach the following exhibit(s) in support: information-subpoena and  
questionnaire (see exhibit A). I have requested  
a copy of the courtfile but it is unavailable.
4. Because this Affidavit contains a sworn denial of the affidavit of service I request the Court hold a traverse hearing.
5. On June 12, 2007, Plaintiff commenced this action by filing the Summons and Complaint.

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Defendant does not have access to affidavit of service.

6. A default judgment was entered against me in this action on \_\_\_\_\_

September 21, 2007

7. I have not had an opportunity to review the affidavit of service and have requested a copy of the court file from the Clerk's Office. To my knowledge with regard to alleged service of the Summons and Complaint, I dispute the allegations of the process server for the following reasons:

- ☒ I was never personally served with a copy of the Summons and Complaint
- ☒ A copy of the Summons and Complaint was never left with a person of suitable age and discretion at my residence or place of employment.
- ☒ A copy of the Summons and Complaint was never attached to the door of my residence.
- ☒ I did not receive a copy of the Summons and Complaint in the mail.

8. I discovered that Plaintiff commenced this action when:

I received a copy of an information  
subpoena and questionnaire from my  
employer.

9. Because I never received notice about the lawsuit, I have a reasonable excuse for my default.

10. I also have one or more meritorious defenses.

- ☒ I do not owe the money.
- ☐ I am a victim of identity theft or mistaken identity.
- ☒ Payment.
- ☒ Incorrect Amount.
- ☒ No business relationship with the plaintiff. (Plaintiff lacks standing.)
- ☐ The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect debt.
- ☐ There is no debt collection license number in the complaint.
- ☒ Statute of limitations.
- ☐ The debt was discharged in bankruptcy.
- ☐ The collateral (property) was not sold at a commercially reasonable price.
- ☒ Unjust enrichment.
- ☐ Violation of the duty of good faith and fair dealing.
- ☐ Unconscionability (the contract is unfair).
- ☐ Laches.
- ☐ Defendant is in the military.
- ☐ Other Defense.

☒ I was not served with written notice of entry of a judgment or order.

and I am filing this motion within the year of service.

\_\_\_\_\_, which is exempt from collection.

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571, 745 N.Y.S.2d 719, 719-20 (2d Dept. 2002). An affidavit by defendant that raises an issue of fact as to jurisdiction is sufficient to rebut the process server's affidavit. National Union Fire Ins. v. Montgomery, 245 A.D. 2d 150, 665 N.Y.S.2d 665, 666 (1st Dept. 1997).

20. This Affidavit raises a question of fact with respect to this Court's jurisdiction, which should be resolved through a traverse hearing. See Kingsland Grp. v. Pose, 296 A.D.2d 440, 440-41, 744 N.Y.S.2d 715, 716 (2d Dept. 2002) ("[S]ince there was a sworn denial of receipt of process, the affidavit of service is rebutted and the plaintiff must establish jurisdiction by a preponderance of the evidence at a hearing."); In re St. Christopher-Ottillie, 169 A.D.2d 690, 691, 565 N.Y.S.2d 72, 73 (1st Dept. 1991) ("[T]he court erred in failing to hold a traverse hearing on the issue of the propriety of personal service, since respondent has raised an issue of fact with respect to the service of the petition.").

21. If this Court finds that C.P.L.R. § 5015(a)(4) does not apply in this action, the Court may vacate the judgment based on excusable default under C.P.L.R. § 5015(a)(1). Mayers v. Cadmen Towers, Inc., 89 A.D.2d 844, 845, 453 N.Y.S.2d 25, 26-27 (2d Dept. 1982) (remitting the case for a hearing to determine "whether the court had jurisdiction over defendant, and, if it did . . . whether leave to interpose an answer containing all or only some defenses should be granted in view of the prejudice, if any, caused by the defendant's default").

22. Excusable default requires a finding of a reasonable excuse for the default and the existence of a potentially meritorious defense to warrant vacatur of the default judgment. Gerdes v. Canales, 74 A.D.3d 1017, 1018, 903 N.Y.S.2d 499, 500 (2d Dept. 2010).

23. "There is a 'strong [public] policy favoring the determination of actions on their merits'." Heskel's West 38<sup>th</sup> Street Corp. v. Gotham Constr. Co., 14 A.D.3d 306, 307, 787 N.Y.S.2d 285, 287 (1<sup>st</sup> Dept. 2005) (alteration in the original).



24. As described above, I have a reasonable excuse for my default as I never received the Summons or the Summons and Complaint and meritorious defenses.

25. I have:

- ☒ not had a previous Order to Show Cause regarding this index number.
- ☐ had a previous Order to Show Cause regarding this index number but I am making this further application because:

[illegible]

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26. I respectfully request that the Court grant my motion to vacate the default judgment or in the alternative, schedule a traverse hearing and, pursuant to C.P.L.R. 5015(a)(4), dismiss this case for lack of personal jurisdiction, lift all stays, order the return of any funds that have been garnished, and permit me to serve papers by mail.

27. If the Court denies my request pursuant to C.P.L.R. 5015(a)(4), I respectfully request that the Court grant my motion to vacate the default judgment pursuant to C.P.L.R. 5015(a)(1), restore the case to the calendar, lift all stays, order the return of any funds that have been garnished, permit me to file the proposed Answer, and permit me to serve papers by mail.

28. I respectfully request that the Court order Plaintiff to produce a copy of the Summons and Complaint and of the Affidavit of Service so that I may supplement my application accordingly.

WHEREFORE, I respectfully request that the Court grant my motion in all respects.

July 23, 2015  
Date

Jose Guzman  
Pro Se Defendant Signature

JOSE GUZMAN

Pro Se Defendant Name

20 W. EUCLID ST.

#1

Address

VALLE STREET NY 11580

Phone

547 339 8116

Sworn to before me on the

23 day of July, 2015

Donna A. Romano  
NOTARY PUBLIC

DONNA A. ROMANO  
Notary Public, State of New York  
Qualified in Suffolk County  
No. 016012518  
My Commission Expires 12/16

Prepared with the assistance of the BRONX CLARO Program by Volunteer Attorney  
Galacatos with statements about the law prepared by  
Theodora Galacatos, Esq., of Fordham Law School's Feerick Center for Social Justice, for the CLARO Program.